THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO : 20718 of 2005

Dated: 21.09.2005

Between:

Gunturu Nagaram Patha Pattabhipuram

Macherla Patha Railway Track Katta Nivasula Sangam,
Old Pathabhipuram, Guntur, represented by its Secretary,

Nallagunta Gangadhara Rao S/o. Munuswamy,

R/O H.No. 3-18-16/G, Pathapattabhipuram,

Guntur, Guntur District, Andhra Pradesh.

..... PETITIONER

AND

The Union of India, Rep. by its Secretary,

Railway Department, Central Secretariat,
New Delhi and others.

…**RESPONDENTS**

ORDER:

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This writ petition is filed seeking a direction to the respondents to consider the representations of the petitioner-sangam dated 22.08.2005 and 30.08.2005 for assignment of the abandoned track area between old Pattabhipuram and Bandarupalli villages of Guntur District, to the members of the sangam, where

houses have been built by them.

Learned counsel for the petitioner contended that for the last 15 years the members of the petitioner-sangam have been residing in the abandoned railway track area between old Pattabhipuram and Bandarupalli villages of Guntur District, and all of a sudden the railway authorities are trying to forcibly demolish their houses without making any alternative arrangements, which is illegal and violative of principles of natural justice. For the said proposition, the learned counsel placed reliance on the decision of the Supreme Court in the case of ***Olga Tellis Vs. Bombay Municipal Corporation***, and prays to allow the writ petition.

On the other hand, learned standing counsel appearing for the respondents contended that a notice under Section 4(1) of the Public Premises Unauthorised Occupation Act, 1971 (for short "the Act") was issued to the members of the petitioner-sangam on 09.04.2004 and after following due process of law, the order of eviction has been passed on 08.08.2005 and therefore, there is no violation of principals of natural justice.

The order of eviction passed by the respondents under Section 5 of the Act has not been challenged and it has become final. Therefore, the members of the petitioner-sangam have no right on the property. In the judgment relied on by the learned counsel for the petitioner, it was held as follows:

> "51. Normally, we would have directed the Municipal Commissioner to afford an opportunity to the petitioners to show why the encroachments committed by them on pavements or footpaths should not be removed. But, the opportunity which was denied by the Commissioner was granted by us in an ample measure, both sides having made their contentions elaborately on facts as well as on law. Having considered those contentions, we are of the opinion that the Commissioner was justified in directing the removal of the encroachments committed by the petitioners on pavements, footpaths or accessory roads. As observed in S. L. Kapoor, (AIR 1981 SC 136). ", where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs." Indeed, in that case, the Court did not set aside the order of supersession in view of the factual position stated by it. But, though we do not see any justification for asking the Commissioner to hear the petitioners, we propose to pass an order, which we believe, he would or should have passed, had he granted a hearing to them and heard what

> we did. We are of the opinion that the petitioners should not be evicted from the pavements, footpaths or accessory roads until one month after the conclusion of the current monsoon season, that is to say, until October 31, 1985. In the meanwhile, as explained later, steps may be taken to offer alternative pitches to the pavement dwellers who were or who happened to be censused in 1976. The offer of alternative pitches to such pavement dwellers should be made good in the spirit in which it was made, though we do not propose to make it a condition precedent to the removal of the encroachments committed by them."

In the said case no notice was given before ordering eviction of the slum dwellers. The decision in the said case has no application in view of the fact that the members of the petitioner-sangam were ordered to be evicted after following due process of law. It is not sought by the petitioner-sangam, in its two representations dated 22.08.2005 and 30.082.005, to provide alternative arrangement. If the representations of the petitioner-sangam are considered, virtually the same would amount to granting a relief contrary to the statutory provisions.

Therefore, the writ petition is devoid of merits and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

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21.09.2005

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